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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. .....

ALBERT BLOOM,

Petitioner,

—v.—

CHARLES LUNDBURG, TROOPER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioner Albert Bloom prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Errors of Connecticut. The decision of the Supreme Court of Errors affirmed the judgment of the Superior Court for Fairfield County, Connecticut, which dismissed petitioner's writ of habeas corpus initiated to attack the validity of the Connecticut Governor's extradition warrant.

Opinions Below

The opinion of the Superior Court, which is the Connecticut trial court, is printed as Appendix A to this petition (Appendix 1a). It is unreported. The opinion of the Supreme Court of Errors, which is the highest Connecticut appellate court, is printed as Appendix B to this petition (Appendix 8a). It is reported at Vol. XXIII No. 1 Connecticut Law Journal 3 (December 5, 1961).

Jurisdiction

The judgment of the Supreme Court of Errors of Connecticut was entered, *in banc*, on November 21, 1961. The opinion of the court below was announced and copies were distributed to counsel on December 5, 1961. The effective date of judgment is December 5, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Constitutional and Statutory Provisions Involved

Petitioner maintains that the judgment of the court below permits his extradition in violation of the U.S. Constitution and the laws of the United States. The constitutional provision relating to extradition is Article IV, §2, Clause 2 (Appendix 18a). The statutory provision relating to extradition is 18 U.S.C. §3182 (Appendix 18a).[1]

Petitioner also relies upon the Due Process Clause of the Fourteenth Amendment (Appendix 19a), in addition to the constitutional and statutory provisions regarding extradition, to challenge the effect of certain documents held by the Connecticut trial court (but not passed upon by the Supreme Court) to be waivers of petitioner's right to challenge his extradition to New York.

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[1] References are indicated as follows:

References to the numbered pages of the appendix to this petition (Appendix a).

References to the numbered paragraphs of the Finding made by the Connecticut Superior Court for purposes of the appeal to the Supreme Court of Errors (F.).

References to the numbered pages of the certified printed record in the Connecticut Supreme Court of Errors and the proceedings in that court after the printing of the record (R.).

References to numbered pages of the appendix to petitioner's brief filed in the Supreme Court of Errors (Pet. St. Ct. App.).

Questions Presented

This action involves the validity of a Connecticut extradition warrant ordering petitioner's return to New York from Connecticut. It is this warrant by which petitioner is currently restrained of his liberty. The questions presented are:

1. When the supporting judgment furnished by the demanding state demonstrates that petitioner had served his entire validly imposed sentence—the sentence recited in the judgment being in excess of the permissible sentence—are the courts of the asylum state permitted to utilize the entire judgment and inquire beyond the recited sentence in the judgment to determine if petitioner is substantially charged with a crime and is a fugitive from justice within the constitutional and statutory provisions regarding extradition?

2. When the supporting documents furnished by the demanding state demonstrate (a) that petitioner was never charged as a second offender in the demanding state and (b) that petitioner had served in excess of the sentence for a first offender when released by the New York authorities four years before his apprehension in Connecticut, is petitioner one substantially charged with a crime and a fugitive from justice within the constitutional and statutory provisions regarding extradition?

3. When the demanding state initiates an extradition request, can petitioner who had served his entire valid sentence in the demanding state before his release be foreclosed from exerting defenses to his extradition because of the execution of purported waivers, one of which is valid only "during the period of my parole" and the other of which was executed while petitioner was in prison and without the aid of counsel?

Statement

The Facts Material to the Federal Questions

Petitioner Albert Bloom—as the Connecticut trial court specifically found (F. 2, R. 14) and as the Connecticut Supreme Court recognized (Appendix 9a)—has been incarcerated a total of 14 years, nine months and 22 days for a 1937 New York forgery conviction. This conviction involved a $22.50 check.[1] New York now seeks his return to serve the balance of a twenty year maximum sentence imposed for a crime which, as the supporting documents demonstrate, carried a ten year maximum (Pet. St. Ct. App. 11, 17). The Governor of Connecticut, honoring the New York request, issued his extradition warrant (Pet. St. Ct. App. 5). The instant habeas corpus action followed petitioner's arrest on the Connecticut Governor's warrant.[2]

Petitioner's contention that he is not substantially charged with a crime and is not a fugitive from justice within the constitutional and statutory provisions regu-

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[1] Specific facts found by a Connecticut trial court are, under Connecticut appellate procedure, part of the Finding, which is a lengthy recapitulation of events in the trial court prepared by the trial judge, after receipt of a draft finding by the appellant and a counterfinding by the appellee. CONNECTICUT PRACTICE BOOK §389 (1951 Ed.); Maltbie, CONNECTICUT APPELLATE PROCEDURE §§129, 130 (2d Ed. 1957). The Finding in this case, which included the subordinate facts found by the trial court, the conclusions reached by the trial court and the claims of law of petitioner, is printed in the record prepared for the Supreme Court of Errors (R. 14-20).

[1] The indictment sets forth the forged check involved (Pet. St. Ct. App. 13).

[2] This action was initiated pursuant to §54-166 Conn. Gen. Stat. (1958 Rev.), which provides for the use of the writ of habeas corpus to challenge an extradition warrant. Pursuant to the initial writ issued by the Superior Court, notice by registered mail was given to the agents of the demanding state (R. 2).

lating extradition, is grounded upon facts apparent on the face of the supporting documents furnished by the Governor of New York to the Connecticut Governor.

On September 28, 1936 petitioner was indicted in the Superior Court of Westchester County, New York, for forgery in the second degree involving a check in the amount of $22.50 (Pet. St. Ct. App. 13). In the indictment petitioner was not charged with having previously been convicted of a felony (Pet. St. Ct. App. 13-15). As the final judgment in the New York criminal proceeding amply demonstrates, petitioner was not charged by either a subsequent information or an indictment as being a second offender (Pet. St. Ct. App. 16; Appendix 22a). Nevertheless, on March 23, 1937 on a plea of guilty to the crime of forgery in the second degree, petitioner was sentenced as a second offender to a maximum term of 20 years (Appendix 9a, 22a).

The crime of forgery in the second degree, for which petitioner was imprisoned on March 23, 1937, was punishable at that time under 888 of the New York penal law

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Although in the possession of respondent at the time of the hearing in this matter, these documents were introduced on behalf of petitioner in the Connecticut trial court. The Connecticut trial court specifically identified the supporting documents as petitioner's Exhibit A in the Finding (F. R. 16). Because petitioner's case is based in large measure on these documents, the significant portions of the documents were printed in the appendix to petitioner's brief in the Supreme Court of Errors (Pet. St. Ct. App. 7-16). That appendix, parenthetically referred to in this petition as Pet. St. Ct. App., has been certified by the clerk of the court below and is being filed with this petition so that the supporting documents themselves are available for the convenience of the Court.

Because of the significance of the 1937 New York judgment, it is reprinted in this petition as Appendix F. Appendix 22a) for the convenience of this Court. It also appears, with the other primary documents supporting the extradition request, in the appendix to petitioner's brief filed in the Supreme Court of Errors (Pet. St. Ct. App. 16).

which provides for "imprisonment for a term not exceeding ten years." (Pet. St. Ct. App. 11, 17). This the court below specifically acknowledged (Appendix 11a).

After having served a total of 14 years, nine months and 22 days (F. 2, R. 14; Appendix 9a) for the offense which carried a maximum imprisonment of 10 years, petitioner on December 6, 1954 was released by the New York parole authorities (F. 2, R. 14).[1] After his release, petitioner, in 1958, was convicted in the federal District Court in Massachusetts for unlawful possession of stolen mail and forgery and uttering United States Treasury checks (F. 4, R. 15; Appendix 9a) and was sentenced to imprisonment for two years at the Federal Correctional Institution at Danbury, Connecticut (F. 4, R. 15; Appendix 9a).

After petitioner's arrest for the federal offense, the New York parole authorities requested his extradition (F. 5, R. 15; Appendix 9a). And after petitioner's release from the federal institution,[2] the New York Governor formally demanded extradition (F. 12, R. 17; Pet. St. Ct. App. 7). It was with this demand that the New York Governor forwarded the supporting documents upon which New York claims a right to extradite petitioner. Upon New York's

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[1] Immediately prior to petitioner's release he was given permission to leave New York and live in Boston, Massachusetts, and at that time he agreed that if he should be arrested "*during the period of my parole* I will waive extradition" (F. 3, R. 14). (Emphasis added.)

[2] While incarcerated at the Federal Correctional Institution at Danbury, petitioner, without the aid of counsel, on May 6, 1958 signed a document entitled "Waiver of Extradition" in which it was stated that he agreed to "waive all legal and other rights I have in the State of Connecticut to oppose extradition to the State of New York." Respondent offered no evidence to indicate what were the circumstances surrounding the signing of the May 6, 1958 document which was acknowledged by the warden of the federal institution (F. 6, R. 15).

demand, the Connecticut Governor issued his warrant, the validity of which is at issue in this proceeding.

The Manner of Raising the Federal Questions

Petitioner's contention that he cannot be extradited because he was not one substantially charged with a crime and was not a fugitive from justice within the U.S. constitutional and statutory provisions relating to extradition was initially raised in his amended application for the writ of habeas corpus (R. 1), upon which the trial in this case proceeded on May 20 and May 23, 1960. This claim was founded upon the fact—apparent from the New York supporting documents (Pet. St. Ct. App. 7-16)—that since petitioner was never charged as a second offender and had served in excess of the maximum sentence which could be imposed upon him, he, therefore, had no unserved sentence obligation to New York when he was released in 1954 (R. 18-19). This claim was reasserted in petitioner's formal claims of law (F. 19, R. 18-19).

Petitioner's contention that the purported waivers of his right to exert defenses to his extradition were invalid was raised at the trial after respondent's assertions of the waivers in his return to the writ (R. 3, 4), as well as in petitioner's formal claims of law (F. 21, 22, 23; R. 19).

After hearing, the Connecticut Superior Court dismissed the writ of habeas corpus, ruling that the New York Governor's certification that petitioner was a parole violator was a "sufficient" basis for the Connecticut Governor to issue his extradition warrant (R. 9; Appendix 5a). In making this decision, the trial court foreclosed judicial inquiry of petitioner's claim that his sentence had expired before his "parole" in New York and that he was not, therefore, one substantially charged with a crime and was not a fugitive from justice. The trial court also concluded

that petitioner had relinquished by the purported waivers, neither of which were executed before judicial authority—all "legal and other rights that he had in the State of Connecticut to oppose extradition to the State of New York." (F. 15, R. 18).

On appeal, the Connecticut Supreme Court of Errors, although for different reasons, affirmed the trial court's judgment. The court below recognized that "It is the claim of the plaintiff that the maximum penalty for a conviction of the crime of forgery in the second degree in New York is imprisonment for ten years and that he has served in excess of that term and, therefore, is not a fugitive from justice subject to extradition to New York." (Appendix 9a). However, ignoring the fact that the New York judgment demonstrates that petitioner had been given a second offender sentence without being charged as a second offender, the court below *reframed* petitioner's position in this manner:

> "He [petitioner] contends that the requisition and supporting papers from New York do not include any copy of an information or indictment charging him with being a second offender; that, therefore, the only valid sentence which could have been imposed on the basis of these papers was that applicable to a first offender; and that the lack of a copy of an information or indictment charging him with being a second offender is vital to the extradition demand. There is no such information or indictment among the papers submitted to the Governor of Connecticut. Whether one is essential to warrant extradition is the sole question we have to decide." (Appendix 10a).*

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*Significantly, this emphasis on the presence of *a copy* of the information is not predicated upon any of petitioner's claims of law (R. 18) or anything in petitioner's brief in the Supreme Court

The Connecticut Supreme Court answered this "sole question" with its ruling that "[A] copy of the information upon which he was prosecuted as a second offender was not essential to the validity of the extradition request." (Appendix 13a).

The court below made *no* reference to the fact that the New York judgment and other supporting papers affirmatively demonstrate that petitioner was sentenced as a second offender without having been charged as a second offender (Pet. St. Ct. App. 16; Appendix 22a). The result was a judgment by the court below which affirmed a trial court judgment permitting petitioner's extradition even though the supporting documents establish (1) that petitioner had served a total of 14 years, nine months and 22 days for a crime which carried a ten year maximum sentence, (2) that petitioner had no unserved sentence obligation to New York when he was released in 1954, and (3) that he was not, therefore, substantially charged with a crime and was not a fugitive from justice within the constitutional and statutory provisions regarding extradition.

The court below did not consider the waiver issue, noting that, "As the waivers are not material to the principal issue and the defendant [respondent] has not urged their consideration we shall disregard them." (Appendix 8a).

The judgment in the court below permitting petitioner's extradition was entered on December 5, 1961. Justice

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of Errors. To demonstrate this petitioner had certified by the clerk of the court below his brief and has filed that copy of the brief with this petition. The issues presented in petitioner's brief in the court below and the significant claims of law are set forth in Appendix E (Appendix 21a). Petitioner's claim is not based upon New York's failure to forward a copy of a second offender information, but upon the fact that the New York judgment demonstrates that petitioner was sentenced as a second offender without being charged as one.

Murphy of that court subsequently entered an order staying the judgment to permit the filing of the instant petition in this Court (Appendix 17a).

Reasons for Granting the Writ

This petition presents significant, fundamental issues of both narrow and broad scope relating to the application of the federal constitutional and statutory provisions regarding interstate extradition. Review of the decision below by this Court is called for (1) because this Court has never delineated with precision the proper scope of review in this area involving the relation of the states, one to another, in our federal system; (2) because this Court's general pronouncements regarding extradition have been disregarded, in effect, by the judgment of the court below and; (3) because there exists a conflict, in principle, between the judgment of the court below and decisions of other state appellate courts.

I. Not in a decade has this Court had before it a case involving an interstate extradition matter.[10] Never has it decided the narrower issue—but an issue of wide import in view of our federal system—raised by this petition. This Court has long recognized (1) that only a person substantially charged with a crime by the demanding state can be extradited and that (2) whether one is substantially charged with a crime is a question of law, always open on the face of the demanding papers to judicial inquiry in a habeas corpus action. *Roberts v. Reilly*, 116 U.S. 80, 95 (1885). What the Court has not decided previously is the exact scope of review available in the demanding state in determining this legal issue.

[10] *Sweeney v. Woodall*, 344 U.S. 86 (1952).

The instant petition raises that narrow issue. Here the judgment submitted by the demanding state recites a sentence in excess of the permissible sentence authorized under the law of the demanding state. Examination of the *entire* 1937 New York judgment demonstrates that petitioner was not charged as a second offender although he was sentenced as one. Only if courts in the asylum state are restricted to the precise stated sentence in the judgment and are not allowed to examine the other portion of the judgment which itself demonstrates the impropriety of the sentence imposed, can the ruling of the court below stand.

There is a dual significance to this scope of review issue raised by this petition. The measure of judicial inquiry to be utilized in determining whether one is substantially charged with a crime for extradition purposes is applicable to habeas corpus actions involving extradition matters in both the state courts and the federal district courts. *Roberts* v. *Reilly*, *supra*, 116 U.S. at 94.

It is true that the court below framing the "sole question" as relating to the need for the presence of the second offender information among the supporting papers did not come to grips with the scope of review issue in its opinion.[1] Nevertheless, the court's holding determined that issue. For, as noted, the entire New York judgment and the other supporting documents affirmatively demonstrate that petitioner was not charged as a second offender. The result was a sentence twice as great as the law permitted

[1] The Connecticut trial court did vaguely discuss this issue, however. It adopted a scope of review even more limited than the one endorsed, *sub silentio*, by the Connecticut Supreme Court in its holding. The Superior Court ruled that the New York Governor's "certification" that petitioner was a parole violator was a "sufficient" basis for the Connecticut Governor to issue his warrant of extradition. R.9, Appendix 5a. By adopting such a constricted view, the Superior Court, in effect, limited its scope of inquiry to a determination of the validity of the signatures of the two governors involved.

because under the law of the demanding state—and this is not disputed by the courts below or respondent—failure to charge one as a second offender clearly precluded the court from imposing a second offender sentence. *People v. Gonaska*, 244 N.Y. 451, 155 N.E. 737 (1927); *People ex rel. Shepard v. Martin*, 267 App. Div. 1041, 49 N.Y.S. 2d 697 (1944); *People v. Kaminski*, 273 App. Div. 971, 78 N.Y.S. 2d 451 (1948). The sole reliance by the court below on the recited sentence in defiance of the undisputed facts on the face of the entire judgment and other supporting documents presents to this Court the issue of the proper scope of review.

It is, then, the effect, not the precise language, of the opinion of the court below which presents the narrow issue concerning the proper scope of review. But the failure of the court below to discuss the controlling issue behind its holding should not prevent this Court from reviewing the judgment below and determining the proper scope of review to be utilized by both federal and state courts in this area which has broad significance to the relationship of the states to each other. Only a determination by this Court can authoritatively delineate the extent of the inquiry, under the Constitution and laws of the United States, which both federal and state courts should adopt in ruling upon the validity of one state's demand upon a sister state for the return of a claimed fugitive.

II. While the narrow issue of the precise scope of review presented by this petition is one of first impression before this Court, a broader issue presents a principle long established by the decisions of this Court. That the judgment of the court below is in conflict with these decisions is another reason why this Court should issue its writ of certiorari.

As this Court recognized almost sixty years ago, there can be no lawful compliance with a demand for extradition

until it appears "that the person demanded is substantially charged with a crime against the laws of the State from whose justice he is alleged to have fled . . . ." *Hyatt v. Corkran*, 188 U.S. 691, 709-10 (1903). The *Hyatt* pronouncement was a reaffirmation of this Court's unanimous decision in *Roberts v. Reilly, supra*, 116 U.S. at 95.

The supporting documents supplied by the demanding state clearly demonstrate that petitioner was indicted for forgery in the second degree (Pet. St. Ct. App. 13-15). The formal judgment demonstrates that no information was filed charging petitioner as a second offender (Pet. St. Ct. App. 16; Appendix 22a). As the New York Board of Parole itself pointed out in the demanding papers (Pet. St. Ct. App. 11), the crime of forgery in the second degree was punishable "under Section 888 of the Penal Law," which provides for "imprisonment for a term not exceeding ten years" (Pet. St. Ct. App. 17; Appendix 11a). By permitting petitioner's extradition when the demanding papers demonstrate that petitioner had no unserved sentence obligation to the State of New York when he was voluntarily released by New York in 1954, the judgment of the court below permits petitioner's extradition even though he is not substantially charged with a crime and conflicts with the principle firmly established by this Court in *Hyatt* and *Roberts*.

Petitioner is well aware that this Court has indicated that inquiry in habeas corpus proceedings is limited when extradition warrants are at issue. In the case at bar, however, petitioner does not seek to set forth the statute of limitations, *Biddinger v. Commissioner of Police*, 245 U.S. 128, 131 (1917), or insanity, *Drew v. Thaw*, 235 U.S. 432, 434 (1914), or the unconstitutionality of the demanding state's statute, *Pettibone v. Nichols*, 203 U.S. 192, 205 (1906). Rather petitioner maintains that since he has no unserved sentence obligation, he is not one substantially charged with a crime.

In another respect the judgment of the court below is in conflict with principles established by this Court. Although the Connecticut Supreme Court specifically did not pass upon the waiver

III. Petitioner does not dispute the right of the Connecticut Governor to extradite a parole violator who is obligated to serve an unexpired portion of a sentence imposed in a demanding state. What petitioner has objected to throughout this proceeding, however, is his extradition when the undisputed facts—apparent from the supporting documents examined under a proper scope of review—amply demonstrate that petitioner is under no unsatisfied sentence obligation to New York and, therefore, is not substantially charged with a crime and is not a fugitive from justice within the meaning of the provisions regulating interstate extradition. The judgment of the court below rejecting petitioner's argument in this regard represents a conflict, in principle, with decisions of other state appellate courts.

Petitioner concedes that there is no precise clash of language between the opinion of the court below and opinions of other state appellate courts, but does maintain that the Connecticut courts' holding clashes with the decisions or language of other state appellate courts.

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issue presented by this case (Appendix 8a), it affirmed the judgment of the Connecticut trial court which held that petitioner had "waived all legal and other rights that he had in the State of Connecticut to oppose extradition to the State of New York" (F. 15, R. 18). The purported waivers were not executed in the presence of any judicial authority. The first, executed after petitioner had served his entire valid sentence, was on its face applicable only "during the period of my parole" (F. 3, R. 15); the other was signed while petitioner was in prison at Danbury, Connecticut, and without the benefit of counsel (F. 6, R. 15). Decisions by this Court are clear that waivers purporting to express an intelligent relinquishment of important rights must be accepted by judicial authority. *Zerbst* v. *United States*, 281 U.S. 276, 312-313 (1930); *Adams* v. *U.S. ex rel. McCann*, 317 U.S. 269, 277 (1942), *rehearing den.* 317 U.S. 713; *Johnson* v. *Zerbst*, 304 U.S. 458, 464 (1937); *Glasser* v. *United States*, 315 U.S. 60, 71 (1942), *rehearing den.* 315 U.S. 827; *Moore* v. *Michigan*, 355 U.S. 155 (1957). There is, therefore, an added conflict with the decisions of this tribunal insofar as the waiver issue is presented.

In *Ex Parte Weinhause*, 202 Mo. App. 245, 216 S.W. 548 (1940), the Missouri asylum court carefully examined the law of the demanding state and concluded that the recitations in the demanding papers were not conclusive on the question of whether or not there was an unsatisfied sentence to be served:

> "From the *testimony*, it clearly appears that the relator was not amenable to further punishment. It is manifest that such was the understanding of the probation officer and the state to its attorney. We can give no other *interpretation to the evidence* than that the prosecution for the offense had come *to an end by the proceeding we have recited*. If a person commits an offense in a demanding state and is afterwards apprehended in another state no one would say that he should be extradited if it appeared he had paid the penalty assessed for such offense by suffering the punishment therefor; *act that is, in effect, what relator has done in this instance*." *Ex Parte Weinhause*, 202 Mo. App. 245, 216 S.W. 548, 550 (1940). (Emphasis added.)

In the case at bar, petitioner, like the relator in *Weinhause*, has paid the penalty properly assessed. The upholding of petitioner's extradition by the court below, then, is in contrast with the result and opinion in the *Weinhause* case.

In *Commonwealth ex rel. Hagan v. Dye, Warden*, 373 Pa. 508, 96 A. 2d 129, 131 (1953), the petitioner, an escapee, failed to establish that he was not a fugitive from justice because "He does not contend that his sentence was invalid." The Supreme Court of Pennsylvania pointed out that in order to establish the fact that petitioner was not a fugitive as stated in the requisition, the burden was on him to prove that "his sentence has been served." 96 A. 2d

at 131. Significantly, what the petitioner in *Hacy* failed to prove, petitioner here has proved: that he is under no obligation to the authorities of the demanding state because his prior valid sentence has been served. The upholding of petitioner's extradition by the court below, then, is in contrast to the language used by the Pennsylvania court in *Hacy*.

And in *Brown v. Grimes*, 214 Ga. 338, 104 S.E. 2d 907 (1958), the petitioner, as petitioner in the case at bar, produced in evidence the supporting documents upon which the extradition warrant was issued. There, as here, the supporting documents amply demonstrate that petitioner had served, at the time he left prison in the demanding state, more than the valid sentence imposed for the crime for which he was originally convicted. The Georgia court, noting that the crime of escape "could not be committed after a sentence had expired," 104 S.E. 2d at 909, concluded that Brown was not substantially charged with a crime for extradition purposes. As a result, the warrant for extradition was invalidated. The Court added:

> "The question as to whether or not the extradition warrant under which an alleged fugitive from justice is held is supported by documents from the demanding state legally sufficient to authorize his extradition *is always open to judicial inquiry* in a habeas corpus proceeding." 104 S.E. 2d at 909 (Emphasis added).

The Connecticut courts' action in this case, then, conflicts with the decision of the Georgia court in the *Brown* case.

In view of the fact that the principles regarding extradition are applied by state as well as federal courts acting primarily pursuant to the federal provisions upon which petitioner relies, this clash, in principle, between the judgment below and the decisions and language of other state

tribunals affords an added basis for this Court to issue its writ of certiorari, even though an indirect conflict of this type would not ordinarily attract the attention of this Court.

CONCLUSION

The judgment of the court below permits petitioner's extradition to serve the balance of a twenty year sentence imposed for a crime involving a $22.50 check even though the documents establish that he had served his validly imposed sentence when released by New York. Unhampered by an authoritative review by this Court, the decision of the court below will (1) generate wasteful controversy in both federal and state courts and (2) leave intact a patently incorrect construction of important constitutional and statutory provisions which effect the relation of the states to each other.

For these reasons, then, this Court should—and petitioner respectfully requests that it does—issue its writ of certiorari to review the judgment of the court below.

Respectfully submitted,

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Dated: February 5, 1962.

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APPENDIX A

MEMORANDUM OF DECISION OF THE SUPERIOR COURT FOR FAIRFIELD COUNTY

SUPERIOR COURT

FAIRFIELD COUNTY

No. 111476

ALBERT BLOOM,

—vs.—

CHARLES LUNDBERG, AN OFFICER OF THE CONNECTICUT STATE POLICE.

MEMORANDUM OF DECISION

The facts in this case are as follows:

1. The Respondent is an officer of the Connecticut State Police.

2. On March 23, 1937, the complainant was duly convicted in the County Court within and for the County of Westchester in the State of New York for the crime of forgery, second degree and was sentenced to imprisonment at Sing Sing State Prison at Ossining, New York at hard labor under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years, No Months and the minimum Ten Years, No Months.

3. On December 6, 1954, the complainant was released on parole by the parole authorities of the State of New

York and pursuant to the terms and conditions of a parole agreement entered into by the said complainant on December 3, 1954, he was permitted to leave the State of New York and go to the State of Massachusetts.

4. Under the terms and conditions of said parole agreement dated December 3, 1954, the complainant agreed that if arrested in another state during the period of his parole, he would waive extradition and would not resist being returned by the parole authorities to the State of New York.

5. On April 21, 1958, the complainant was duly convicted in the United States District Court for the District of Massachusetts for the offense of unlawful possession of stolen mail and forging and uttering United States Treasury checks (19 count) and was sentenced to imprisonment for a period of Two Years and thereafter on April 25, 1958, he was delivered to the Federal Correctional Institute at Danbury, Connecticut to commence service of the sentence.

6. On April 7, 1958, a warrant was issued by the parole authorities of the State of New York for the retaking of the complainant as a parole violator.

7. On May 6, 1958, the complainant executed a waiver of extradition in which he agreed to waive all legal and other rights that he had in the State of Connecticut to oppose extradition to the State of New York.

8. His Excellency, the Governor of the State of Connecticut, on requisition of His Excellency, the Governor of the State of New York, has issued a warrant dated

Appendix A
Memorandum of Decision

December 8, 1959 directing the police authorities of the State of Connecticut to arrest and deliver the said Albert Bloom to Frank J. Milane and or Andrew Klein for return to the State of New York.

9. The said Albert Bloom is held in custody by the Respondent by virtue of the said warrant of his Excellency, the Governor of the State of Connecticut.

The plaintiff rests his petition for a writ of habeas corpus upon the following grounds:

1. That although indicted and convicted of the crime of forgery in New York on March 23, 1937, he was never charged with the crime of having been convicted of a felony previously.

2. That his sentence was "It is ordered, that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisoned in Sing Sing State Prison at Ossining, New York at hard labor under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years, No Months and the minimum Ten Years, No Months."

* * * * *

"This proceeding to challenge an extradition is a summary one to be kept within narrow bonds."

Odell v. Platt 21 Conn. Supplement 13, 15

Counsel for the applicant claimed in his application and argued at the hearing that the detention of return of the

Appendix A
Memorandum of Decision

petitioner would be a violation of his constitutional rights.

It is clearly beyond the authority of this court to pass upon the constitutionality of the sentencing of the petitioner in the State of New York.

If his constitutional rights were invaded, his remedy lies in the courts of the State of New York or in the United States Courts.

Our Supreme Court has said "We did not mean to say before one can be extradited the court of the State where he is found are to determine whether or not he has committed a crime in the demanding state."

Rosenberg v. Slavin 122 C 304, 308

The court further finds that the petitioner was substantially charged in the warrant with a crime and that he is a fugitive from justice of the State of New York.

"An application to the governor for a warrant of extradition presents the twofold question whether the person demanded has been substantially charged with a crime against the laws of the state where he is wanted and whether he is a fugitive from justice from that state."

Ross v. Crofutt 84 C 370, 373

He must therefore be surrendered under the warrant of extradition.

"Such is the command of the Supreme law of the land, which may not be disregarded by any state."

Appelyards v. Mass. 203 U. S. 222, 227

Appendix A
Memorandum of Decision

The petitioner was a parolee, whose waiver was revoked.

"A parolee convicted who has left one state with the express consent of the authorities can nevertheless become a fugitive from justice when his parole has been revoked."

Drinkall v. Spiegel 68 C 441, 450

Therefore the petitioners' efforts to avoid extradition on this ground must fail.

Moulthrope v. Matus 139 C 272, 278

There is in the file an Exhibit A certification by the governor of New York that the petitioner is a parole violator. That is sufficient. It is not for this court to determine whether or not the petitioner has any valid defenses to the charge placed against him by the New York authorities. That is a question for the State of New York.

Cappola v. Platt 123 C 38
Moulthrope v. Matus 139, 272

The petition of a writ of habeas corpus is dismissed and judgment is rendered for the defendant.

HEALEY, *J.*

Filed July 6, 1960.

Appendix A

JUDGMENT OF THE SUPERIOR COURT FOR FAIRFIELD COUNTY

STATE OF CONNECTICUT
SUPERIOR COURT
COUNTY OF FAIRFIELD
July 6, 1950
No. 111476

ALBERT BLOOM, of the City of Boston and Commonwealth of Massachusetts,

—vs.—

CHARLES LUNDBURG, a trooper of the Connecticut State Police at the Ridgefield Barracks, his superiors or assistants, the agent or agents of the State of New York, and LOUIS W. WELLS, as State's Attorney in and for the County of Fairfield.

Present,

HON. FRANK T. HEALEY,

Judge.

JUDGMENT

This action dated April 26, 1950, praying for a writ of habeas corpus under Section 54-166 of the Connecticut General Statutes, was presented to this Court on the 27th day of April, 1950. The Court thereupon issued its writ of habeas corpus ordering the defendant Charles Lundburg

Appendix A
Judgment

to show the cause of the alleged restraint of the plaintiff's liberty, at the Court-House in the County of Fairfield, on the 18th day of May, 1960, at ten o'clock in the forenoon, and further ordering that the Clerk of said Court cause a true and attested copy of said order to be sent via registered mail to Messrs. Francis J. Mulligan and Andrew Klein, Division of Parole, State of New York, and to Louis W. Willis, State's Attorney for Fairfield County.

Said action came thence to May 20, 1960, when the plaintiff filed his amended application, thence to May 23, 1960, when the defendants filed their return to said writ, and thence to the present time when the parties appeared and were at issue as on file.

The Court, having heard the parties, finds the issues for the defendants.

Whereupon it is Adjudged that said petition for a writ of habeas corpus be and the same hereby is dismissed.

HEALEY,
Judge

APPENDIX B

OPINION OF THE SUPREME COURT OF ERRORS OF CONNECTICUT

SUPREME COURT OF ERRORS

October Term, 1961

Decision announced Dec. 5, 1961

AUBREY BLOOM v. CHARLES L. UNDERBERG

Habeas corpus alleging unlawful imprisonment, brought to the Superior Court in Fairfield County and tried to the court, *Healey, J.*; judgment dismissing the writ, from which the plaintiff appealed. *No error.*

Jacob D. Zeldes, with whom were *Arnold L. Bar* and, on the brief, *David Goldstein*, for the appellant (plaintiff).

Otto J. Saur, state's attorney, with whom, on the brief, was *John F. McGowan*, assistant state's attorney, for the appellee (defendant).

MURPHY, J. The plaintiff obtained a writ of habeas corpus to test the legality of his arrest and detention under a warrant issued by the governor of Connecticut on the requisition of the governor of New York, who sought his extradition to that state as a fugitive from justice. The court held that the requisition and the supporting documents were in accordance with the requirements of law and dismissed the writ. The plaintiff has appealed.

The court determined the matter on the sufficiency of the extradition papers, implemented by two waivers of extradition signed by the plaintiff. As the waivers are not material to the principal issue and the defendant has not

urged their considerations we shall disregard them.[1] No testimony was presented by either side. The finding of the court was based on certain exhibits which were introduced in evidence. They included the New York requisition papers; the arrest warrant based thereon, issued by the governor of Connecticut with endorsements of service by the defendant, a state policeman; and three other documents to which specific reference is unnecessary.

With such corrections in the finding as the plaintiff is entitled to, the salient facts are these: The plaintiff was convicted in the state of New York on March 23, 1937, of the crime of forgery in the second degree and was sentenced as a second offender to an indeterminate sentence in prison for not less than ten years and not more than twenty years. He was confined under this sentence until July 27, 1943, when he was conditionally released on parole, but on June 19, 1945, he was declared delinquent and on June 18, 1946, was reimprisoned. He was again released on parole on December 6, 1954. He had then served fourteen years, nine months and twenty-two days. He was again, on March 3, 1957, declared delinquent and a parole violator. In 1958, in the United States District Court in Massachusetts, he was convicted of nineteen counts of unlawful possession of stolen mail and of forging and uttering United States treasury checks and was sentenced to imprisonment for two years and confined in the federal correctional institute in Danbury, Connecticut. On his release from that institution, he was arrested under the warrant issued by the governor of Connecticut. It is the claim of the plaintiff that the maximum penalty for a conviction of

[1] A motion by the plaintiff to strike and expunge an appendix to the defendant's brief has been granted

the crime of forgery in the second degree in New York is imprisonment for ten years and that he has served in excess of that term and therefore is not a fugitive from justice subject to extradition to New York. A claim advanced by him in the trial court that he could not be extradited from Connecticut because he was in this state involuntarily to serve the sentence imposed by the federal court has been abandoned.

Article IV, 2, of the United States constitution provides that a "Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." To implement the operation of this provision and to provide for its execution, Congress has enacted an extradition statute; 18 U.S.C. §3182. In 1957, Connecticut adopted the Uniform Criminal Extradition Act. General Statutes §§ 54-157–54-185. The purpose of the act is to make uniform the law of those states which enact it. It also codifies the procedural features relating to extradition and serves to expedite the execution of both the constitutional provision and the federal law. *Cook* v. *Ridger*, 215 Ind. 500, 501, 20 N.E.2d 933.

The plaintiff concedes that a paroled convict who violates his parole can be extradited from an asylum state to serve the unexpired portion of the sentence imposed in the demanding state. He contends that the requisition and supporting papers from New York do not include any copy of an information or indictment charging him with being a second offender; that, therefore, the only valid sentence which could have been imposed, on the basis of these

papers, was that applicable to a first offender; and that the lack of a copy of an information or indictment charging him with being a second offender is fatal to the extradition demand. There is no such information or indictment among the papers submitted to the governor of Connecticut. Whether one is essential to warrant extradition is the sole question we have to decide.

The penal law of New York provides that forgery in the second degree is punishable by imprisonment for a term not exceeding ten years. N.Y. Pen. Law 888. The punishment for a person convicted of forgery in the second degree who had previously been convicted of a felony must be an indeterminate term, the minimum of which must be not less than one-half of the longest term prescribed on a first conviction, and the maximum not longer than twice such longest term. Id. 1941. The procedure under which a subsequent offender is to be arraigned and sentenced is governed by 1943 of the Penal Law, which provides that an information shall be filed either after sentence or after conviction. The accused person then has to be presented in court, informed of the allegations in the information and advised of his rights, one of which, in the event that he does not admit the allegations, is to have a jury decide if he is a second offender.

The supporting papers to the requisition included a copy of the indictment of the plaintiff for forgery in the second degree and a copy of the judgment of March 23, 1937, reciting the conviction and imposing a sentence. The latter document recited the plaintiff's conviction by plea of guilty to the charge contained in the indictment and concluded as follows: "Ordered and Adjudged by the Court, that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisoned in the Sing Sing State Prison at

Ossining, N.Y., at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years No Months, and the minimum Ten Years No Months." The governor of New York certified the supporting papers as authentic and duly authenticated in accordance with the laws of that state. He also stated in his demand that the plaintiff was present in that state at the time the crime was committed, was convicted and sentenced, broke the terms of his parole, and thereafter fled from the justice of New York state and was in Connecticut.

The plaintiff was convicted and sentenced for forgery in the second degree. By reason of the fact that he was a second offender, the punishment for that crime was greater than it would have been for a first offense. See *State* v. *Holloway*, 144 Conn. 295, 301, 130 A.2d 562; *State* v. *Mead*, 130 Conn. 106, 108, 32 A.2d 273; *State* v. *Delmonte*, 110 Conn. 298, 300, 147 A. 825. The punishment is for the new crime only, but is the heavier if the offender is a habitual criminal. *McDonald* v. *Massachusetts*, 180 U.S. 311, 312, 21 S. Ct. 389, 45 L. Ed. 542. The fact of the former conviction is an element merely in determining the degree of criminality of the second offense. "The Legislature of this State has said that one who commits a crime, after having been convicted of another crime, is a greater offender than as though he had not previously been convicted, and the punishment inflicted is solely for the second offense, to which a greater degree of criminality is thus attached." *People* v. *Carlesi*, 154 App. Div. 481, 487, 139 N.Y.S. 309, aff'd, 208 N.Y. 547, 101 N.E. 1114 (aff'd, 233 U.S. 51, 34 S. Ct. 576, 58 L. Ed. 843; *People ex rel. Prisament* v. *Brophy*, 287 N.Y. 132, 135, 38 N.E.2d 468; *Graham* v. *West Virginia*, 224 U.S. 616, 624, 32 S. Ct. 583, 56 L. Ed. 917. The second offender statute in New York does not create a new crime

any more than our Indeterminate Sentence Act (General Statutes §54-121) does. The facts which are necessary to enable the court to determine whether an accused is a second offender are not necessarily or ordinarily any part of the crime which has been charged. They are collateral matters and, whatever measure of punishment is adopted as a result of these collateral facts, the offense as a criminal offense remains unchanged. *State v. Reilly*, 94 Conn. 698, 702, 110 A. 550.

General Statutes §54-159 enumerates the requirements for recognition by the governor of Connecticut of the extradition demand by the executive authority of another state. So far as it applies to this case, the statute provides that no such demand shall be recognized unless it is in writing and alleges that the accused was present in the demanding state at the time of the commission of the crime and thereafter fled from the state, and unless it is accompanied by a copy of the indictment found or "a copy of a judgment of conviction or of a sentence imposed in execution thereof," together with a statement by the executive authority of the demanding state that the person claimed has broken the terms of his parole. The documents submitted by the governor of New York contain all of these requirements. So long as the copy of the judgment recited the plaintiff's conviction of the crime of forgery in the second degree and his sentence as a second offender because he had previously been convicted of a felony, a copy of the information upon which he was presented as a second offender was not essential to the validity of the extradition request.

There is no error.

In this opinion the other judges concurred.

Appendix B

JUDGMENT OF THE SUPREME COURT OF ERRORS OF CONNECTICUT

At a Supreme Court of Errors, holden at Hartford on the first Tuesday of October 1961

On Appeal from the Superior Court

No. 5130

ALBERT BLOOM,

—vs.—

CHARLES LUNDBERG, *et al.*

This appeal by the Plaintiff, claiming error in the process, record and judgment, and in the proceedings and decision of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Superior Court, for Fairfield County, on the 1st day of September 1960 and came to this Court at its session at Hartford, on the first Tuesday of March, 1961, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court, there is no error.

It is therefore considered and adjudged that there is no error.

By the Court,

Date of Judgment November 21, 1961

Decision announced December 5, 1961

J. LEO CAMPANA
Clerk

APPENDIX C

APPLICATION TO STAY JUDGMENT AND ORDER

SUPREME COURT OF ERRORS
STATE OF CONNECTICUT

December 5, 1961

No. 5130

ALBERT BLOOM

—v.—

CHARLES LUNDBURG, *et al.*

APPLICATION TO STAY JUDGMENT

1. On December 5, 1961, this Court announced its decision affirming the judgment of the court below against petitioner and denying petitioner's claim based, *inter alia*, upon the United States Constitution and the laws of the United States, that petitioner was not substantially charged with a crime and was not a fugitive from justice.

2. The United States constitutional and statutory provisions upon which petitioner relies, United States Constitution Article IV, § 2, Clause 2, and Laws of the United States, 18 U.S.C. § 3182, were exerted timely in the trial court (R. 18). Both the Superior Court and this Court rejected petitioner's claims based upon these constitutional and statutory provisions.

3. In the interpretation and construction of the provisions of the United States Constitution and the Laws of

the United States, the supreme judicial authority is the United States Supreme Court. *International Union of Electrical Radio & Machine Workers* v. *General Electric Co.*, Vol. XXII, No. 89, Conn. Law Journal 4; 6 (Oct. 10, 1961).

4. Petitioner raises substantial federal questions and does not make this application for the purposes of delay. In both the Superior Court and Supreme Court of Errors petitioner has acted promptly and without the extension of time in which to file pleadings or briefs:

(a) Although a longer period of time was requested by petitioner, the Superior Court, on Friday, May 20, 1960, directed petitioner to file his brief on the merits on Monday, May 23, 1960. Petitioner's brief was filed timely. Respondent filed no brief.

(b) Respondent sought and obtained a two week extension of time to file his counter-finding in this Court. Petitioner requested no extension of time to file his request for finding and draft finding in this Court.

(c) Respondent obtained a six week extension to file his brief in this Court. Petitioner obtained no extension to file his brief and reply brief in this Court.

5. Under the applicable laws of the United States, 28 U.S.C. §2101(c), petitioner's petition for writ of certiorari to review the judgment of this Court need not be filed until 90 days after entry of judgment in this Court.

6. Upon the judgment of this Court being effective and petitioner being surrendered to the authorities of the State

Appendix C
Order

of New York, petitioner's right not to be extradited because of the provisions of the United States Constitution and the Laws of the United States upon which he relies will be surrendered and the issues in this case will become moot.

WHEREFORE, petitioner applies to this Court, or any Justice of this Court, to stay the judgment of this Court (1) until and including February 15, 1962, and (2) if petitioner files his petition for a writ of certiorari in the United States Supreme Court to review the judgment of this Court on or before February 15, 1962, until final disposition of the cause by the United States Supreme Court.

The Petitioner,

By GOLDSTEIN AND PECK
His Attorneys

ORDER

The above application having been heard, the judgment of this Court is stayed until and including February 15, 1962 and, if petitioner files his petition for a writ of certiorari in the United States Supreme Court, until final disposition of the case by the United States Supreme Court.

JAMES E. MURPHY
An Associate Justice
of the Supreme Court
of Errors of Connecticut

APPENDIX D

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Art. IV, §2, Cl. 2:

"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

18 U.S.C. §3182:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged. June 25, 1948, c. 645, 62 Stat. 822."

Appendix D
Constitutional and Statutory Provisions Involved

U.S. Const., Amend. 14:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX E

THE ISSUES AND CLAIMS OF LAW AS FRAMED BY PETITIONER FOR THE SUPREME COURT OF ERRORS OF CONNECTICUT

[Excerpt from Brief for Petitioner Filed in the Supreme Court of Errors of Connecticut.]

ISSUES.

This appeal involves the validity of an extradition warrant by which petitioner is restrained of his liberty. The issues raised by this appeal are:

1. When the supporting documents furnished by the demanding state demonstrate that petitioner is not substantially charged with the crime and is not a fugitive from justice, is the certification by the demanding state's governor to the contrary a sufficient basis upon which petitioner can be extradited?

[Answered in the affirmative by the court below.]

2. When the supporting documents furnished by the demanding state demonstrate that petitioner had served his validly imposed sentence in the demanding state when released several years before his apprehension in Connecticut, is petitioner one substantially charged with a crime and a fugitive from justice within the constitutional and statutory provisions regulating extradition?

[Not answered by the court below.]

3. When the demanding state initiates an extradition request, can petitioner, who had served his entire valid sentence in the demanding state, be foreclosed from exerting

Appendix E
Issues

defenses to his extradition because of the previous execution of purported waivers—one of which is valid only "during the period of my parole" and the other of which was executed without consideration while petitioner was in prison and without the aid of counsel?

[Answered in the affirmative by the court below]

[Excerpt from the Finding Filed by the Connecticut Trial Court for Use in the Appeal to the Supreme Court of Errors.]

Petitioner made the following claims of law respecting the judgment to be rendered, upon which the Court ruled as hereinafter stated.

19. Insofar as petitioner had served the entire valid sentence imposed upon him by the State of New York on March 23, 1937, as apparent from the supporting documents (Pet. Ex. A) furnished by His Excellency, the Governor of New York, petitioner was not substantially charged with a crime and was not a fugitive from justice within the meaning of the U.S. Constitution, Art. 4, Sec. 2, Clause 2, and the laws of the United States, 18 U.S.C. Sec. 3182, and within the meaning of the laws of the State of Connecticut, Secs. 54-157 through 54-185 (Conn. Gen. Stat., 1958 Rev.), and his restraint by virtue of the warrant issued by His Excellency, the Governor of the State of Connecticut, is therefore illegal, invalid and unconstitutional.

APPENDIX F

MAY 23, 1937 JUDGMENT OF COUNTY COURT OF WESTCHESTER COUNTY

At a Term of the County Court of the County of Westchester,

held at the County Court House, in City of White Plains, New York, on March 23, 1937

Present: HON. GERALD NOLAN, County Judge

The People of the State of New York

against

Albert Bloom Defendant

Indictment No accuses defendant with crime of Forgery 2nd degree

W.F.Horan A.D.A.

Edward H. Innet For Deft

The aforesaid Albert Bloom having been indicted for the crime of Forgery 2nd degree and having been convicted of the crime of as charged

a plea of guilty and he having answered all questions under oath

and the District Attorney on 19 having filed an Information (1943 Penal Law) accusing said X of having been previously convicted of certain felon- as in said information set forth, and said X on arraignment in open Court having been informed of the allegations contained in said Information and of his right to admit or deny, or remain silent to said allegations, and that if he denied same or remained silent, that he had a right to a trial by jury as to the truth thereof according to law, and he having stated that he is the same person mentioned in said allegations—denied said allegations—remained silent as to said allegations—and a jury having been impanelled and a trial having been had and the jury, by its verdict, having found the defendant to be the same person mentioned in said allegations X X

and it appearing to said defendant has been previously convicted of felon as specified

he had a right to a trial by jury as to the truth thereof according to law, and he having stated that he is the same person mentioned in said allegations—denied said allegations—remained silent as to said allegations—and a jury having been impanelled and a trial having been had and the jury, by its verdict, having found the defendant to be the same person mentioned in said allegations

and it appearing that said defendant has been previously convicted of felony as specified in Section 1941 and 1942 of the Penal Law the Court now adjudicates the defendant to be a felony offender.

and the defendant having had two days notice of sentence (470 CCP), now on being arraigned for sentence and being asked if he had any legal cause to show why judgment should not be pronounced against him (480 CCP) and he answering "NO";

Ordered and Adjudged *by the Court,* that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisoned in the Sing Sing State Prison at Ossining, N.Y., at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years No Months, and the minimum Ten Years No Months.

A TRUE EXTRACT FROM THE MINUTES

Edward Lie Eu
CLERK

[This judgment also appears as page 16 of petitioner's appendix filed in the Supreme Court of Errors (Pet. St. Ct. App. 16).]

Office-Supreme Court, U.S.
FILED
MAR 2 1962
JOHN F. DAVIS, CLERK

No. 706

Supreme Court of the United States

[redacted], October Term, 1961

ALBERT BLOOM,

Petitioner,

v.

CHARLES LUNDBURG, Trooper,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OTTO J. SAUR
State's Attorney for
Fairfield County
Attorney for Respondent
County Court House
Bridgeport, Connecticut

JOSEPH J. ROSE
Assistant Attorney General
State of New York
of Counsel

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Supreme Court of the United States

No. , October Term, 1961

ALBERT BLOOM,

Petitioner,

v.

CHARLES LUNDBURG, Trooper,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review a final judgment of the Supreme Court of Errors of Connecticut, entered November 21, 1961, which unanimously affirmed a judgment of the Superior Court for Fairfield County, Connecticut, dismissing a writ of *habeas corpus*, obtained by petitioner to defeat his extradition to New York.

Opinions Below

The opinions of the Courts below are adequately set forth in the petition. The opinion of the Supreme Court of Errors of Connecticut is also reported at 175 A. 2d 568.

Question Presented

May petitioner, a parole violator, defeat extradition in a *Habeas Corpus* proceeding, upon his conclusion that the supporting papers demonstrate no second felony information was filed in the demanding state where (1) the informa-

tion was in fact duly filed and is a matter of public record; (2) the supporting documents show that petitioner was properly sentenced as a second offender and contain all of the requirements for recognition by the governor of the asylum state.

Statement

On September 28, 1936, petitioner was indicted by a Westchester County (New York) Grand Jury, for Forgery in the Second Degree, a felony.

On March 23, 1937, the District Attorney of Westchester County filed an information, pursuant to the provisions of New York Penal Law, § 1943, accusing him of having been previously convicted of a felony*. Petitioner was duly arraigned upon the information; admitted that he was the same person mentioned therein and the fact of the previous conviction. He was thereupon sentenced, as a second felony offender, upon his plea of guilty, to an indeterminate term of from 10 to 20 years' imprisonment.

Petitioner was received in Sing Sing Prison on March 23, 1937, credited with 177 days prior jail time. He was paroled on July 27, 1943, declared delinquent as of June 19, 1945 and returned to prison as a parole violator† on June 18, 1946.

* He was convicted of forgery, in Suffolk County Superior Court, Massachusetts, on December 15, 1919.

† He was arrested, in the United States District Court, Boston, Massachusetts, in 1945, while on parole from New York, of stealing from the mails and forging and uttering a check. He was sentenced to a year and a day in the Federal Correctional Institution, Danbury, Connecticut. On June 17, 1946, he was released from that institution, waived extradition and was immediately returned to New York.

On December 6, 1954, he was again paroled from prison in New York State, to reside with a sister in Boston, Massachusetts, subject to the supervision of the Massachusetts Board of Parole.

On April 3, 1958, in the United States District Court, Boston, Massachusetts, while on parole from New York, petitioner pleaded guilty to a 19-count information, charging him with unlawful possession of the mail, in violation of 18 U. S. C. § 1708 and with forging and uttering United States Treasury checks, in violation of 18 U. S. C. § 495.*

On April 21, 1958, in that Court, he was sentenced to two years' imprisonment at the Federal Correctional Institution, Danbury, Connecticut.

He was declared delinquent by the New York State Board of Parole as of March 3, 1957 and a warrant dated April 7, 1958, was lodged as a detainer against him at the Federal Correctional Institution.

He was released from Federal custody on October 24, 1959, at which time he was taken into custody by the Connecticut State Police on the basis of the parole violation warrant lodged by the New York State Board of Parole.

On December 3, 1959, the Governor of New York requested the Governor of Connecticut to apprehend and deliver petitioner to the agents of the State of New York on the grounds that petitioner had violated his parole

* Seven counts of the information charged that between March 3, 1957 and June 14, 1957, he had in his possession 7 checks which had been contained in letters stolen from the mail, while twelve counts charged that between March 15, 1957 and June 14, 1957, he forged and uttered 6 U. S. Treasury checks, totaling $516.70. The larcenies were from U. S. Mail boxes and were of Social Security checks.

conditions by his conviction and sentence, in Federal Court, while on parole. On December 8, 1959, the Governor of Connecticut found that the New York demand was "conformable to the law and ought to be complied with" and issued a warrant for his extradition.

On December 24, 1959, respondent arrested petitioner pursuant to the warrant and brought him to the Danbury City Court, where, with counsel present, he was arraigned and released on bail.

By an application to the Superior Court, Fairfield County, petitioner sought a writ of *Habeas Corpus*, alleging that he was illegally restrained by the Connecticut Governor's warrant and writ of *Habeas Corpus* was issued on April 27, 1960. In an opinion filed July 6, 1960, that Court dismissed the petition and rendered judgment for respondent.

In a decision filed November 21, 1960, the Supreme Court of Errors of Connecticut unanimously affirmed. 175 A. 2d 568. Subsequently, Associate Justice Murphy of that Court entered an order granting a stay of judgment until final disposition of the matter by this Court.

ARGUMENT

The petitioner contends that New York's demanding papers show conclusively that no information was filed by the District Attorney of Westchester County, in 1937, charging him with being a second felony offender and therefore, his proper sentence should have been 10 years' imprisonment, as a first offender, rather than 10 to 20 years' imprisonment, as a second felony offender. He concludes that since he had served approximately 14 years in prison at the time of his parole in 1954, he had served 4

years in excess of his legal sentence; that there remained no unexpired portion of a sentence in New York at the time of his parole and therefore, that he cannot now be extradited to New York as a parole violator.

We will show, in reply: (1) that a second felony offender information was in fact filed by the District Attorney of Westchester County in 1937; (2) that this was and is a matter of public record, acknowledged in writing by the petitioner in a prior proceeding and officially reported in a decision of the New York Supreme Court; (3) that an indeterminate sentence of 10 to 20 years is absolutely proper, under New York Penal Law, § 888 and § 1941 for one sentenced as a second felony offender for forgery in the second degree; (4) that there still remains an unexpired portion of petitioner's 10 to 20 year sentence; (5) that there is no requirement in New York, statutory or otherwise, that the judgment of conviction refer to the filing of a multiple felony offender information and that the judgment of the Westchester County Court meets all the New York statutory requirements; (6) that even if no information had been filed by the District Attorney of Westchester County, the conviction is valid and the sole relief to which petitioner would be entitled would be a re-sentence *nunc pro tunc* in the demanding state, and (7) that the documents submitted by the Governor of New York contained all of the requirements for recognition by the Governor of Connecticut.

I

A second felony offender Information was filed.

On March 23, 1937, an Information was filed in the District Attorney of Westchester County, accusing petitioner of having previously been convicted of a felony, in

Massachusetts, in 1919 (Resp. Appendix 1). On March 23, 1937, in the Westchester County Court, petitioner was duly arraigned upon this information, prior to being sentenced as a second felony offender (Resp. Appendix 2). He thereupon admitted that he was the same person named in the information and the prior convictions against him.

In 1949, petitioner brought a *coram nobis* proceeding in Westchester County Court, wherein he applied for resentencing as a first offender. In an affidavit in support of his motion therein, petitioner stated, in pertinent part:

> ALBERT BLOOM, being duly sworn, deposes and says:
>
> * * * On the said 23rd day of March, 1937, I was charged in an information filed pursuant to Section 1944 of the Penal Law, as being a second offender. I pled guilty to this information and admitted that I was the same person mentioned in the records and admitted the said previous conviction. * * *
>
> ALBERT BLOOM"

Although petitioner was represented by other counsel in that proceeding, we call to the Court's attention the fact that the sole other affidavit submitted in his behalf therein, was sworn to by one Max Kabatznick, an attorney of Boston, Massachusetts, who appears to be the same person who is of counsel for petitioner in this proceeding.

The motion in that proceeding was denied by an order dated December 6, 1940. On appeal, the New York Supreme Court, Appellate Division, Second Judicial Department unanimously affirmed. *People* v. *Bloom*, 276 App. Div. 1101 (1950). In its decision that Court noted:

> * * * On March 23, 1937, defendant pleaded guilty to the crime of forgery in the second degree. An information was then filed against him charging him with being a second offender in that he had been convicted in Massachusetts in 1919 of the crime of forgery in the second degree. Sentence was thereafter

> imposed upon the defendant, as a second offender, to a term of ten to twenty years. * * *"

Thus it appears, as a matter of public record, that an information was in fact filed by the District Attorney of Westchester County in 1937; that petitioner was duly arraigned in open Court upon that information and admitted the fact of his first conviction. It also appears, again as a matter of public record, that petitioner admitted the foregoing facts in a sworn statement in writing and that the New York Supreme Court, Appellate Division, has held that an information was filed in 1937.

II

The indeterminate sentence of 10 to 20 years imposed upon petitioner in New York, was absolutely proper.

We submit that the Westchester County Court properly sentenced petitioner, in 1937, to an indeterminate term of 10 to 20 years, as a second offender, upon conviction of forgery in the second degree. At the time of petitioner's conviction, the punishment for forgery in the second degree, for a first felony offender, was imprisonment for a term not exceeding 10 years. New York Penal Law, § 888. With certain exceptions not here applicable, the punishment for a second felony offender is "imprisonment for an indeterminate term, the minimum of which shall be not less than one-half of the longest term prescribed upon a first conviction, and the maximum of which shall be not longer than twice such longest term * * *." New York Penal Law, § 1941. It has been specifically held that the proper punishment of one convicted of forgery in the second degree, who is a second felony offender, is an indeterminate term of 10 to 20 years' imprisonment. *People ex rel. LaMere v. Jackson*, 9 A. D. 2d 843 (Third Dept., 1959).

Even if the District Attorney of Westchester County had never accused petitioner, by indictment or information, of being a second felony offender, his *conviction* is proper and the sole relief to which he would be entitled would be a resentence, *nunc pro tunc* as of 1937 in compliance with Penal Law, § 1943. *People ex rel. Hallenbeck* v. *Morhous*, 265 App. Div. 979 (Third Dept., 1942). Obviously, this relief can be obtained only in the demanding state and not in the state of asylum.

III

There still remains an unserved portion of petitioner's 10 to 20 year sentence.

Because of his conviction in Federal Court, petitioner has been charged by the New York State Board of Parole with having violated the terms and conditions of his parole. At the time petitioner was released from prison on parole, New York Correction Law, § 219, provided if any prisoner, while on parole, is convicted of a crime under the laws of another state, government or country, which if committed in New York would be a felony, * * * he shall upon being returned to this state be compelled to serve in State Prison the portion remaining of the maximum term of the sentence on which he was released on parole from the time of such release on parole until the expiration of such maximum." Under these provisions, petitioner owes the State of New York 4 years, 8 months and 12 days, computed thus:

	Year	*Month*	*Day*
Maximum expiration date	1959	08	15
Date of parole	1954	12	03
Time left to serve	04	08	12

Even if petitioner should subsequently be held as a parole delinquent (*id.*, § 218) rather than as a parole felony violator (*id.*, § 219) he has not completed his maximum sentence in New York.

New York Penal Law, § 218, at the time of his release on parole, provided that the Board of Parole "may, if it sees fit, require such prisoner to serve out in prison the balance of the maximum term for which he was originally sentenced calculated from the date of delinquency . . . ." Under this more liberal provision, petitioner would have remaining, unserved, 2 years, 5 months and 12 days of his sentence, calculated as follows:

	Year	*Month*	*Day*
Maximum expiration date	1959	08	15
Declared delinquent	1957	03	03
Time left to serve:	02	05	12

In either situation it will be observed that a portion of petitioner's 1937 sentence remains unserved. Although his sentence was for an indeterminate term, it is the rule in New York the minimum term of such a sentence merely accelerates the period in which a prisoner becomes eligible for parole consideration, while the maximum term represents the actual sentence that must be served. *People ex rel. Clemente v. Murphy*, 9 N. Y. 2d 215 (1960). Under calculations most favorable to petitioner, he still has an unserved portion of his New York sentence of approximately 2½ years.

IV

There is no need for a judgment of conviction, in New York, to refer to the filing of a multiple felony offender information and the judgment herein meets every statutory requirement of New York State.

It will be observed that in the body of the judgment of conviction herein (Petitioner's Appendix F) a number of blank spaces were provided for the insertion of information relating to the filing of and arraignment upon a multiple felony offender information. These blanks were not filled in, and from this petitioner concludes, at p. 13 of his brief, that "the formal judgment demonstrates that no information was filed charging petitioner as a second offender." We submit that no such conclusion is warranted.

While New York practice permits a District Attorney to proceed against a multiple felony offender either by indictment or information, *People* v. *DeSantis*, 305 N. Y. 44 (1953), cert. den. 345 U. S. 944 (1953), there is no requirement whatsoever that a judgment of conviction refer to the filing of a multiple felony information, nor has petitioner cited any such requirement. The material contained in the 1937 judgment in this respect, therefore, was mere surplusage, and the failure to complete the blank spaces in no way vitiates that judgment, nor does it affect the validity of the sentence imposed.

Under New York practice the judgment of conviction must specify the place of imprisonment (Penal Law; § 2180); where the sentence is to imprisonment for more than one year, it must specify that it shall be "at hard labor" (*id.*, § 2183); it may suspend sentence or the execution thereof (*id.*, § 2188); for most first offenders it must impose an indeterminate sentence (*id.*, § 2189) and must

impose the indeterminate term of imprisonment mandated for multiple felony offenders (*id.*, §§ 1941-4). The only other requirement is that a second felony offender must be sentenced as such, notwithstanding the fact that the sentences of second and third felony offenders are governed by the same formula. *People* v. *French*, 5 A. D. 2d 852, (Second Dept., 1958).

New York Code of Criminal Procedure, § 484, which specifies what papers shall constitute the judgment-roll, does not include a multiple offender information. The rationale for this, as the Supreme Court of Errors of Connecticut noted in its opinion, is that New York's second offender statute does not create a new crime. "The facts which are necessary to enable the court to determine whether an accused is a second offender are not necessarily or ordinarily any part of the crime which has been charged. They are collateral matters and, whatever measure of punishment is adopted as a result of these collateral facts, the offense as a criminal offense remains unchanged. * * *."

Since the 1937 judgment of conviction meets all of New York's statutory requirements including the sentence of petitioner specifically as a second felony offender, we submit that it is valid on its face and petitioner's conclusion that it shows no information was filed, is totally incorrect.

V

The documents submitted by the Governor of New York contain all of the requirements for recognition by the Governor of Connecticut.

Connecticut General Statutes § 54-159, enumerate all of the requirements of a demand for extradition, for recogni-

tion by the Governor of Connecticut.* The Supreme Court of Errors of Connecticut held that "the documents submitted by the Governor of New York contain all of these requirements." The documents submitted by the Governor of New York included: (1) the indictment; (2) the judgment of conviction; (3) the sentence imposed by the Court; (4) the commitment to state prison; (5) the parole agreement and (6) the determination of parole delinquency, showing that petitioner is a parole violator. Petitioner has conceded that a convict who violates parole can be extradited to serve the unexpired portion of the sentence imposed in the demanding state. We submit that his contentions with respect to filing of a multiple offender information in New York have been shown to be false as a matter of public record and that his efforts to avoid extradition on the grounds presented should fail. *Appelwards* v. *Massachusetts*, 203 U. S. 222 (1906), *Moulthrope* v. *Matús*, 139 C. 272.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

Otto J. Saur
State's Attorney for Fairfield County
Attorney for Respondent
County Court House
Bridgeport, Connecticut

Joseph J. Rose
Assistant Attorney General
State of New York
of Counsel

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*This section is identical with the provisions of Section 3 of the Uniform Criminal Extradition Act.

Respondent's Appendix 1

COUNTY COURT—WESTCHESTER COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,

against

ALBERT BLOOM, alias ABRAHAM BLOOM, alias H. RICHARDSON, alias H. BERMAN.

BE IT REMEMBERED by this Information that I, Walter A. Ferris, District Attorney of the County of Westchester, do accuse the defendant above named heretofore on the 14th day of January, 1937, and herein duly convicted before Honorable Gerald Nolan, County Judge of Westchester County, of the crime and felony of Forgery in the second degree, committed after the first day of July, 1926, of having been previously to the said conviction likewise convicted of a certain crime and felony, that is to say:

That the said defendant under the name of Abraham Bloom, otherwise called H. Richardson, otherwise called H. Berman, on the 10th day of June, 1919, in the Superior Court, within and for the County of Suffolk, in the commonwealth of Massachusetts, was duly by law convicted of the crime and felony of Forgery, upon his plea of guilty, and thereafter on the 15th day of December, 1919, was sentenced by said Court to be placed on probation and to recognize in three hundred dollars with a probation officer

of said court, a surety for his further appearance before said court.

Dated: White Plains, N. Y., this 23rd day of March, 1937.

WALTER A. FERRIS
District Attorney of the
County of Westchester

(SEAL)

NO FEE

State of New York, }
County of Westchester. } ss.:

I, EDWARD L. WARREN, Clerk of the County of Westchester, and also Clerk of the County and Supreme Courts in and for said County, the same being Courts of record,

Do HEREBY CERTIFY That I have compared the preceding Information with the original in the action of The People of the State of New York vs. Albert Bloom, alias Abraham Bloom alias H. Richardson-Berman filed in this office on the 23rd day of March 1937, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, this 9th day of February 1962.

EDWARD L. WARREN,
Clerk

(SEAL)

Respondent's Appendix 2

At a Term of the County Court, held in and for the County of Westchester, at the County Court House in the City of White Plains, N. Y., on the 23rd day of March, 1937.

Court met pursuant to recess.

Present: Hon. Gerald Nolan, County Judge.

Proclamation made and Court opened.

THE PEOPLE, *vs.* ALBERT BLOOM.	Information charging previous felony conviction filed pursuant to Section 1943 Penal Law W. F. Horan, A. D. A. Edward H. Innes

The District Attorney filed the following Information pursuant to Section 1943 of the Penal Law, accusing the defendant above named with previous felony conviction as follows:

THE PEOPLE, *vs.* ALBERT BLOOM under the name of ABRAHAM BLOOM.	June 4th, 1919, Boston, Mass. Forgery. Probation 2 Years

The defendant above named having been charged with previous felony conviction by an Information filed pursuant to Section 1942 Penal Law; now on being arraigned to plead to same and being informed of the allegations contained therein and of his right to be tried by a jury as to the truth thereof according to law; he pleads Guilty and admits

he is the same person mentioned in the records as set forth in said Information and admits said previous felony conviction.

THE PEOPLE, *vs.* ALBERT BLOOM.	Forgery 2nd degree W. F. Horan, A. D. A. Edward H. Innett

The defendant above named having heretofore pleaded Guilty to the crime of Forgery 2nd degree and having been duly sworn and having answered all questions; now on being arraigned for sentence and being asked if he had any legal cause to show why judgment should not be pronounced against him and he answering "NO",

WHEREUPON, IT IS ORDERED AND ADJUDGED BY THE COURT, that the said Albert Bloom, for the offense aforesaid, whereof he is convicted, he having been heretofore convicted of a felony, be imprisioned in the Sing Sing State Prison at Ossining, N. Y., at hard labor, under an indeterminate sentence, the maximum of such imprisonment to be Twenty Years No Months, and the Minimum Ten Years No Months; and it is

ORDERED, that the Sheriff of the County of Westchester forthwith convey the said Albert Bloom to the Sing Sing State Prison at Ossining, N. Y., in conformity with the terms of this sentence.

A TRUE COPY OF THE MINUTES.

EDWARD L. WARREN,
Clerk.

(SEAL)

Respondent's Appendix 2

NOTICE

State of New York, }
County of Westchester, } ss.

I, EDWARD L. WARREN, Clerk of the County of Westchester, and also Clerk of the County and Supreme Courts in and for said County, the same being Courts of record,

DO HEREBY CERTIFY That I have compared the preceding Minutes with the original in the action of The People vs. Albert Bloom entered in this office on the 23rd day of March 1937, and do hereby certify the same to be a correct transcript therefrom and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Courts and County, this 16th day of February 1962.

(SEAL)

EDWARD L. WARREN,
Clerk

7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 706

ALBERT BLOOM,

Petitioner,

—v.—

CHARLES LUNDSTROM, TROOPER,

Respondent.

REPLY BRIEF FOR PETITIONER

DAVID GOLDSTEIN
ARNOLD J. BALZ
JACOB D. ZELDES
955 Main Street
Bridgeport, Connecticut

Counsel for Petitioner

MAX KARAZNICK
10 State Street
Boston, Massachusetts

Of Counsel

TABLE OF AUTHORITIES

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 706

ALBERT BLOOM,

Petitioner,

—v.—

CHARLES LUNDBURG, TROOPER,

Respondent.

REPLY BRIEF FOR PETITIONER

With flagrant disregard for the confines of the record in this cause, respondent—on the basis of factual material completely foreign to the record—urges this Court to deny review of the Connecticut judgment which sanctions petitioner's extradition on a record which establishes petitioner was not substantially charged with a crime within the meaning of the constitutional and statutory provisions regarding extradition.

Respondent does not quarrel with petitioner's formation of the questions presented by this case[1] or petitioner's reasons why the writ should issue. And respondent completely abandons the rationale of the Connecticut courts

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[1] Under Rules 24.1 a and 40.1 of the Rules of this Court, respondent could have reframed the questions presented if he so desired. Apparently his failure to do so indicates an agreement with the questions presented by petitioner.

which have ruled in his favor.[2] Rather respondent argues his cause on the merits and attempts to justify the Connecticut Governor's extradition warrant upon evidence never before the Connecticut Governor and *dehors* the record in this habeas corpus action.

By way of reply, petitioner urges these points:

I.

In his entire brief, respondent makes *not one single reference* to the record upon which the Connecticut courts acted. Instead, respondent:

(1) Recites, in four of the paragraphs of his 12-paragraph statement section and in two of the three footnotes in that section (Res. Br. 2-4),[3] facts not in the record.

---

[2] The Connecticut trial court held that the certification by the Governor of New York that petitioner was a parole violator "is sufficient" (Appendix 5a) to determine that petitioner is subject to extradition. The Connecticut Supreme Court answered what it considered to be the "sole question" of the case with its ruling that:

> "[A] copy of the information upon which he was prosecuted as a second offender was not essential to the validity of the extradition request" (Appendix 13a).

Without a single mention of either the New York certification or the "sole question" ruled upon by the Connecticut Supreme Court, respondent urges this Court to deny review on the basis of material clearly not in the record.

[3] References are indicated as follows:

References to the numbered pages of the appendix to the petition for a writ of certiorari — (Appendix a)

References to the numbered pages of the appendix to this brief — Reply Appendix a

References to the numbered pages of respondent's brief in opposition — Res. Br.

References to the numbered appendices annexed to respondent's brief — Res. App.

References to the numbered pages of the appendix to petitioner's brief filed in the Connecticut Supreme Court of Errors — Pet. Sup. Ct. App.

(2) Makes cryptic references to a fractional portion of a 13-year-old affidavit purportedly signed by petitioner and to the existence of a 13-year-old, unquoted, apparently insignificant affidavit executed by petitioner's Massachusetts counsel (Res. Br. 6), neither of which are in the record; and

(3) Appends to his brief a purported second offender information and a purported 1937 New York judgment reciting the second offender charge (Res. App. 1, 2), neither of which are in the record.

The extraneous item upon which respondent most heavily relies—the 1937 judgment purporting to both charge and sentence petitioner as a second offender (Res. App. 2)—was specifically ordered stricken from the record by the Connecticut Supreme Court of Errors by an order signed by Chief Justice Baldwin on November 21, 1961.

Petitioner's motion to strike the improper substituted judgment, as well as the Supreme Court order, is set forth as Appendix G to this brief (Reply Appendix 4a). The motion and order also appear as the first, second and third typewritten pages of the record, certified by the clerk of the court below under date of January 4, 1962, on file with the clerk of this Court. To demonstrate that the judgment stricken by the Supreme Court of Errors is identical to the judgment appended to respondent's brief, a certified copy of respondent's brief in the Connecticut Supreme Court of Errors containing the stricken matter is being filed with this reply brief.

Neither this substituted judgment (Res. App. 2) nor the second felony offender information (Res. App. 1) were presented to the Connecticut Governor or to the Connecticut trial court and, as noted, when the substituted judgment (Res. App. 2) was presented to the Connecticut

Supreme Court for the first time on appeal, that court ordered the substituted judgment stricken.[1]

Petitioner is well aware that he invokes this Court's discretion in seeking review by way of certiorari. He is well aware that the denial of this court's writ of certiorari does not import approval of the judgment below. But for this Court to give *any* consideration to material clearly inadmissible in the Connecticut trial court, to material *dehors* the record, and to material specifically stricken by the Connecticut Supreme Court would be to violate the spirit of Justice Holmes' opinion in *Saunders* v. *Shaw*, 244 U. S.

[1] Significantly, the documents appended to respondent's brief and upon which respondent so heavily relies were clearly inadmissible in the Connecticut trial court. This action was brought to test the legality of petitioner's restraint imposed by virtue of the Connecticut Governor's extradition warrant. Obviously, documents which were not before the Governor were inadmissible to substantiate New York's request for extradition. Moreover, both federal and state law emphasize that any charge, information, indictment or judgment which is the basis for an extradition request must be certified by the Governor of the demanding state. 18 U.S.C. §3182 (Appendix 1a); §54-159 Conn. Gen. Stat. (1958 Rev.) (Reply Appendix 7a). This requisite is missing from the material improperly submitted to this Court in appendix form.

It is doubtful if this certificate could possibly be forthcoming. In the 1937 New York judgment submitted to the Governor and properly in evidence, it is clearly stated that petitioner "having had two days notice of sentence" was sentenced as a second offender on *March 25, 1937*. (Appendix 22a.) Yet respondent's purported judgment annexed to his brief and the second offender information state that the information charging petitioner as a second offender was filed on *March 25, 1937*. (Respondent's App. 1, 2.) In respondent's copy of the 1937 "judgment" these words indicating that the two day notice was given and which clearly appear in the original (Appendix 22a) are omitted. The New York Governor certified that the 1937 judgment which is in evidence was "authentic and duly authenticated in accordance with the Laws of" New York. (Pet. St. Ct. App. 7.) Petitioner makes no claim *at this time* that the two day notice is an absolute necessity, but if the New York Governor certified that it was given when he asked the Connecticut Governor to extradite, he could not now certify as authentic a judgment which makes no reference to the two day notice.

317, 319 (1917), where this Court unanimously held that the plaintiff in error "has been deprived of due process of law contrary to the Fourteenth Amendment, because the case has been decided against him [on appeal] without his ever having had the proper opportunity to present his evidence."

II.

By cramming such an abundance of material foreign to the record in his brief, respondent, in fact, recognizes the weakness of the supporting documents actually in the record and upon which the instant extradition warrant was issued.

The only one of respondent's five arguments which remotely deals with the record properly before this Court is point IV in which respondent argues:

> "[T]here is no requirement whatsoever that a judgment of conviction refer to the filing of a multiple felony information, nor has petitioner cited any such requirement . . .
>
> "New York Code of Criminal Procedure, 484, which specifies what papers shall constitute the judgment-roll, does not include a multiple offender information" (Res. Br. 10-11).

Significantly, this argument was never advanced by respondent in any of the courts below.

Moreover, respondent's argument is in patent conflict with the New York Code of Criminal Procedure. 484, contrary to respondent's assertion, makes no reference whatsoever to the proper contents of a criminal judgment, but deals with the court's power to remit fines. 485 deals with the contents of the judgment roll and specifies that the judgment roll shall include "a copy of the minutes of the judgment" (Reply Appendix 1a).

And 485a of the Code of Criminal Procedure specifically provides that the *minutes* shall include the "nature of the prior offense or offenses which is the basis for sentence" as a second or multiple offender, "the date or dates of such prior conviction or convictions and the court or courts in which such prior conviction or convictions was had . . ." (Reply Appendix 6a).

The 1937 New York judgment presented to the Connecticut Governor—the only New York judgment properly before this Court (Appendix 22a)—demonstrates that petitioner was sentenced as a second offender without being charged as a second offender. Respondent at no place even suggests such a practice is proper. On the face of the supporting documents, then, petitioner owed no unserved sentence to New York at the time of his release in 1954. An extradition warrant based on such documents cannot stand, consistent with the demands of the Constitution and the laws of the United States and the decisions of this Court.

CONCLUSION

Respondent's sole argument based on the record in this case is clearly without merit. His attempt to thwart this Court's review of the judgment below by the injection of extraneous material, the most significant of which was specifically stricken by the Connecticut Supreme Court, demonstrates the inherent weakness of the supporting documents upon which petitioner's extradition has been justified by the Connecticut executive and judiciary.

Petitioner's present whereabouts, as respondent recognizes, is no secret. If the State of New York has documents which properly permit petitioner's extradition—although to date petitioner has not been presented with

such documents—certainly a proper extradition request could be made. But to tolerate respondent's manipulation of the record at this appellate stage of the instant habeas corpus action in order to justify the judgment of the court below most certainly would "ride rough" shod over this Court's proud boast that "The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defense of human freedom." *Ex Parte Yerger*, 74 U. S. (8 Wall.) 85, 95 (1868).

Certainly, if two sovereign states are to combine to compel petitioner to serve the balance of a 20 year sentence imposed for forging a $22.50 check after petitioner has served 14 years 9 months and 22 days for that offense, their actions must fit within the prescriptions of the Constitution and the laws of the United States.

For these reasons and for the reasons advanced in the petition, then, this Court should—and petitioner respectfully requests that it does—issue its writ of certiorari to review the judgment of the court below.

Respectfully submitted,

DAVID GOLDSTEIN
ARNOLD J. BAI
JACOB D. ZELDES
955 Main Street,
Bridgeport, Connecticut
Counsel for Petitioner

MAX KABATZNICK
10 State Street
Boston, Massachusetts
Of Counsel

Dated: March 8, 1962

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[Appendices A–F Are Annexed to the Petition for a Writ of Certiorari Filed February 5, 1962.]

APPENDIX G

MOTION TO STRIKE AND ORDER

SUPREME COURT OF ERRORS

STATE OF CONNECTICUT

September 5, 1961

No. 111476 (Superior Court)

No. 5150 (Supreme Court of Errors)

ALBERT BLOOM,

Petitioner,

—v.—

CHARLES LUNDBURG, AN OFFICER OF THE CONNECTICUT STATE POLICE,

Respondent.

MOTION TO STRIKE AND EXPUNGE APPENDIX TO RESPONDENT'S BRIEF

1. Pursuant to §54-166 (Conn. Gen. Stat. 1958 Rev.), petitioner initiated this habeas corpus action to test the legality of his restraint by virtue of a warrant of extradition issued by the Governor of Connecticut on demand of the Governor of New York. Petitioner maintains that, because, *inter alia*, the demanding State's supporting documents (Petitioner's Exhibit A) demonstrate that petitioner is not substantially charged with a crime, the Connecticut Chief Executive is depriving him of his constitu-

Appendix G
Motion to Strike and Order

tional and federal statutory right, as well as his Connecticut statutory right, not to be extradited.

2. Petitioner's claim is predicated upon, *inter alia*, the showing upon the face of the New York supporting documents (Petitioner's Exhibit A) that petitioner was not charged as a second offender and had completed his 1937 New York maximum sentence when paroled.

3. To meet petitioner's contention, respondent alleges that petitioner was properly charged as a second offender and, to substantiate this claim, unfounded on the evidence in this cause, annexed, as Respondent's Appendix I, to his brief, what respondent refers to as a "certified copy of judgment of Westchester County Court," certified 13 days after the judgment rendered on this cause in the court below.

4. Said "certified copy of judgment of Westchester County Court" in the appendix to respondent's brief was not presented in evidence in the court below and is *dehors* the record in this appeal.

5. Said "certified copy of judgment of Westchester County Court" was inadmissible in evidence in the court below because of, *inter alia*, provisions of 18 U. S. C. §3182 and §54-159 Conn. Gen. Stat., 1958 Rev.).

6. Consideration of said "certified copy of judgment of Westchester County Court" on the instant appeal would constitute a denial of due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution.

Appendix G
Motion to Strike and Order

Wherefore, petitioner moves this Court to strike and expunge Respondent's Appendix I, containing said "certified copy of judgment of Westchester County Court."

The Petitioner,

By GOLDSTEIN AND PECK
His Attorneys

This is to certify that on this date a copy of this document was mailed via U. S. Mail, postage prepaid, to:

Honorable Otto J. Saur
State's Attorney
172 Golden Hill Street
Bridgeport, Connecticut

Dated at Bridgeport, Connecticut, this 5th day of September, 1961.

GOLDSTEIN AND PECK

By /s/ JACOB D. ZELDES
955 Main Street
Bridgeport, Conn.

November 21, 1961.
Motion granted
By the Court
Baldwin, C.J.

APPENDIX B

ADDITIONAL STATUTORY PROVISIONS INVOLVED

485 N. Y. Code of Criminal Procedure

"When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had; and must, upon the service upon him of notice of appeal, immediately annex together and file the following papers, which constitute the judgment roll:

"1. A copy of the minutes of a challenge interposed by the defendant to a grand juror, and the proceedings and decision thereon;

"2. The indictment and a copy of the minutes of the plea or demurrer;

"3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, or to a juror who participated in the verdict, and the proceedings and decision thereon;

"4. A copy of the minutes of the trial;

"5. A copy of the minutes of the judgment;

"6. A copy of the minutes of any proceedings upon a motion either for a new trial or in arrest of judgment;

"7. The case, if there be one;

"8. When the judgment is of death or of life imprisonment following a recommendation of a jury pursuant to section ten hundred forty-five-a of the penal law, the clerk of the court in which the conviction was had shall, within thirty days after a

notice of appeal shall be served upon him, cause to be prepared and printed, as required by the general rules of practice, the record and judgment roll upon which the appeal is to be heard as prescribed in this section and in section four hundred and fifty-six of this act and, after being duly certified by him, cause the same to be filed with the clerk of the court of appeals or with the clerk of the appellate division of the supreme court, as the case may be, and must cause to be forwarded to the said clerk the number of copies of the record and judgment roll which are required by the rules of the court of appeals or of the appellate division of the supreme court, as the case may be, which shall form the case and exceptions upon which the appeal shall be heard, and three copies shall also be furnished to the defendant's attorney and three to the district attorney and; where the judgment is of death, one to the governor of the state, and the remainder distributed according to the rules of the court of appeals or of the appellate division of the supreme court, as the case may be. In such cases of life imprisonment as hereinbefore specified, where a further appeal is allowed to the court of appeals, said appeal shall be heard by the court of appeals upon seven copies of the record in the appellate division of the supreme court, said copies to be furnished by the clerk of the court in which the conviction was had. The expense of preparing and printing the judgment-roll in such case shall be a county charge, payable out of the court fund upon the certificate of the county clerk, approved by the county judge or a justice of the supreme court residing in the county in which the con-

viction was had. As amended L. 1885, c. 520; L. 1887, c. 493, § 1; L. 1889, c. 379; L. 1897, c. 427, § 1; L. 1916, c. 230; L. 1943, c. 201; L. 1944, c. 208, eff. March 21, 1944."

§485-a *N. Y. Code of Criminal Procedure*

"It shall be the duty of the court in which any person shall be convicted of an offense punishable in a state prison, before passing the sentence therefor, to ascertain by the examination of such convict on oath, and in addition to such oath, by such other evidence as can be obtained, whether such convict had learned and practiced any mechanical trade, and in like manner such other facts tending to indicate the causes of the criminal character or conduct of such convict, as to the court shall seem proper and desirable, and the court shall direct the clerk of the court to enter such of the facts so ascertained, and such other facts as to the court shall seem proper and desirable, upon the minutes of the court, and said clerk shall include a copy thereof in the certified copy of the sentence of such convict which shall be delivered to the sheriff of the county in which such conviction shall be had. Whenever such a person is sentenced as a second, third or fourth felony offender under the provisions of sections nineteen hundred forty-one or nineteen hundred forty-two of the penal law, it shall be the duty of the court to direct the clerk of the court to enter upon the minutes of the court the nature of the prior offense or offenses which is the basis for sentencing such a person as a second, third or fourth felony offender, the date or dates of such prior conviction or

Appendix II

Additional Statutes Pertinent Thereto

convictions and the court or courts in which such prior conviction or convictions was had and said clerk shall include such facts in the certified copy of the sentence of such person which shall be delivered to the sheriff of the county in which such conviction shall be had." Added L. 1949, c. 66. Examended L. 1957, c. 265, eff. April 25, 1957."

§ 54.139 Comp. Gen. Stat. (1958 Rev.)

"No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under section 54.162, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. (1957, P.A. 362; S. 3.)"